

1 Raymond J. Tittmann, No. 191298  
2 Jodi K. Swick No. 228634  
**EDISON, McDOWELL & HETHERINGTON LLP**  
3 1 Kaiser Plaza, Suite 1010  
4 Oakland, CA 94612  
Telephone: 510.628.2145  
Facsimile: 510.628.2146  
Email:raymond.tittmann@emhllp.com  
jodi.swick@emhllp.com

6 Attorneys for Defendants  
7 ONEBEACON AMERICAN INSURANCE COMPANY  
FOR ITSELF AND AS SUCCESSOR IN INTEREST TO  
COMMERCIAL UNION INSURANCE COMPANY

8  
9  
10 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

11 JOHN WARD and PIERCE WARD,  
12 Plaintiffs,  
13 v.  
14 AMERICAN ZURICH INSURANCE  
15 COMPANY, et al.,  
16 Defendants.

**NO. 3:13-cv-03140-SI**

**HON. SUSAN ILLSTON**

**STIPULATION AND [PROPOSED]  
ORDER TO RESCHEDULE PRETRIAL  
PREPARATION DATES**

AS AMENDED

17  
18 WHEREAS, on January 21, 2014, the Court issued a Pretrial Preparation Order  
19 setting case management and trial dates as indicated below.

20 WHEREAS, the underlying default judgment in the Personal Injury Action<sup>1</sup>, which  
21 Plaintiffs now seek to collect in this insurance coverage action, is currently on appeal. On  
22 or about April 2, 2014, the Court of Appeal announced that oral argument was set for  
23 April 29, 2014. A decision on the appeal is expected by the end of July 2014.

24  
25  
26 <sup>1</sup> Patricia Ward v. Ajax Boiler, Inc., et al. (Alameda County Superior Court Case No. RG12626502) ("The  
27 Personal Injury Action"). On July 5, 2013, the Hon. Jo-Lynne Q. Lee denied Defendant Goss-Jewett's  
Motion To Set Aside Entry Of Default/Default Judgment Against Defendant Goss-Jewett Co. of Northern  
28 California. Goss-Jewett has filed an appeal from this Court's Order. That appeal is pending as Case  
Number A139306 in Division 3 in the First Appellate District.  
00371879.DOC

1        WHEREAS, the issues in this insurance coverage action depend on how the appeal  
 2 in the Personal Injury Action is resolved. Specifically, as previously advised, the insurer-  
 3 defendants assert that the lack of notice prior to entry of default prejudiced them and  
 4 renders the default uncollectable. *See, e.g., Earle v. State Farm Fire & Cas. Co.*, 935 F.  
 5 Supp. 1076, 1082 (N.D. Cal. 1996) (post-trial tender was deemed prejudicial as a matter  
 6 of law, therefore forfeiting coverage). If the appeal is granted and the default judgment is  
 7 overturned, this obviously affects the insurers' argument concerning prejudice.

8        THEREFORE, the parties agree that the deadlines in this insurance coverage action  
 9 should be continued so that the notice-prejudice issue can be briefed after the appeal is  
 10 decided. The parties therefore propose the following briefing dates, setting the summary  
 11 judgment hearing on this issue for October 31, 2014, and subsequent deadlines following  
 12 therefrom.

13       The Parties also propose a further case management conference for August 15, 2014,  
 14 to discuss the anticipated appellate decision and any affect it may have on the dates  
 15 proposed herein.

16       ACCORDINGLY, the parties stipulate and respectfully request that the Court enter  
 17 an Order adopting the following proposed modification of deadlines:

<b>Event</b>	<b>Prior Dates</b>	<b>New Dates</b>
Further Case Management	May 23, 2014 at 3:00 p.m.	August 15, 2014 at 3:00 p.m.
Motion for Summary Judgment re Notice Prejudice	June 20, 2014	September 19, 2014
Opposition to Motion for Summary Judgment re Notice Prejudice	July 7, 2014	<sup>3</sup> October <del>6</del> <sup>17</sup> , 2014
Reply to Opposition to Motion for Summary Judgment re Notice Prejudice	July 14, 2014	<sup>17</sup> October <del>20</del> <sup>25</sup> , 2014
Hearing re Motion for Summary Judgment re	July 25, 2014	October 31, 2014

Event	Prior Dates	New Dates
Notice Prejudice	at 9:00 a.m.	at 9:00 a.m.
Non-Expert Discovery Cutoff	October 31, 2014	December 9, 2014 <del>January 2, 2015</del>
Designation of Experts	September 26, 2014	November 21, 2014 <del>December 1, 2014</del>
Rebuttal (Experts)	October 13, 2014	December 1 <sup>5</sup> , 2014 December 19, 2014
Expert Discovery Cutoff	October 31, 2014	<del>January 2, 2015</del>
Last Day to File Dispositive Motions	October 31, 2014	January 9, 2015
Opposition to Motion for Summary Judgment	November 14, 2014	January 23, 2015
Reply to Opposition to Motion for Summary Judgment	November 21, 2014	January 30, 2015
Hearing re Motion for Summary Judgment	December 5, 2014 at 9:00 a.m.	February 13, 2015 at 9:00 a.m.
Pretrial Conference	January 27, 2015 at 3:30 p.m.	March 24, 2015 at 3:30 p.m.
Jury Trial Date	February 9, 2015 at 8:30 a.m.	April 6, 2015 at 8:30 a.m.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: March 28, 2014

EDISON, McDOWELL, & HETHERINGTON LLP

By: s/ Raymond Tittmann  
Raymond J. Tittmann  
Jodi Swick

Attorneys for Defendants  
ONEBEACON AMERICAN INSURANCE  
COMPANY (FOR ITSELF AND AS  
SUCCESSOR IN INTEREST TO  
COMMERCIAL UNION INSURANCE  
COMPANY)

1  
2 Dated: March 28, 2014

SHINGLER LAW

3  
4 By: s/ Ronald Shingler  
Ronald J. Shingler

Richard A. Brody

5  
6 Attorneys for Plaintiffs  
JOHN AND PIERCE WARD

7  
8 Dated: March 28, 2014

SINNOTT PUEBLA CAMPAIGN &  
CURET, APLC

9  
10 By: s/ Blaise Curet  
Randy Mark Marmor

11  
12 Blaise S. Curet

13  
14 Attorneys for Defendants  
15 AMERICAN ZURICH INSURANCE  
COMPANY, ZURICH AMERICAN  
INSURANCE COMPANY AND NORTHERN  
INSURANCE COMPANY OF NEW YORK

16  
17 Dated: March 28, 2014

BECHERER, KANNETT & SCHWEITZER

18  
19 By: s/ Mark Kannett  
Mark S. Kannett

20  
21 Lori Schweitzer

22 Bridget Anne McKinstry

23  
24 Attorneys for Defendants  
TRAVELERS CASUALTY AND SURETY  
COMPANY F/K/A AETNA CASUALTY  
AND SURETY COMPANY

1 Dated: March 28, 2014

2 AIWASIAN & ASSOCIATES

3 By: s/ John Conway

4 John Calvin Conway

5 Attorneys for Defendants  
6 ACE PROPERTY & CASUALTY  
7 INSURANCE COMPANY, F/K/A CIGNA  
8 PROPERTY & CASUALTY INSURANCE  
9 COMPANY, F/K/A AETNA INSURANCE  
10 COMPANY

11 \_\_\_\_\_  
12 **ORDER**

13 PURSUANT TO STIPULATION, IT IS SO ORDERED. AS AMENDED.  
14

15  
16  
17  
18  
19  
20 DATED: 4/15/14

21  
22   
23

24 The Honorable Susan Illston  
25 United States District Court Judge  
26  
27  
28